

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

CAROLYN M. STEWART,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-12-0802-HE
	)	
CAROLYN W. COLVIN,	)	
Acting Commissioner of the Social	)	
Security Administration,	)	
	)	
Defendant.	)	

**ORDER**

Plaintiff Carolyn M. Stewart filed this action seeking judicial review of the final decision of the Commissioner of the Social Security Administration denying her applications for disability insurance benefits and supplemental security income benefits under the Social Security Act. Consistent with 28 U.S.C. § 636(b)(1)(B), the case was referred to Magistrate Judge Gary M. Purcell, who recommends that the Commissioner’s decision be reversed and the matter remanded for further proceedings.


The magistrate judge concluded the Administrative Law Judge (“ALJ”) erred in his analysis at steps three and five of the sequential evaluation procedure. Specifically, he determined that the ALJ failed to “expressly consider the medial evidence in light of [Listing 1.02's] criteria and the regulatory explanation of the criteria” and that the error was not harmless. Report and Recommendation, p. 8. The magistrate judge also concluded that “the ALJ’s step five decision based on the grid rules is not supported by substantial evidence in the record.” *Id.* at p. 11.

The parties, having failed to object to the Report and Recommendation, waived their

right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996); *see* 28 U.S.C. §636(b)(1)(C). Accordingly, the court adopts Magistrate Judge Irwin's Report and Recommendation, **REVERSES** the final decision of the Commissioner and **REMANDS** the case for further proceedings consistent with the Report and Recommendation, a copy of which is attached to this order. This decision does not suggest or imply any view as to whether plaintiff is or is not disabled, or what result should be reached on remand. *See also* Report and Recommendation, p. 9 n.4.

**IT IS SO ORDERED.**

Dated this 23rd day of July, 2013.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE